

ENTERED

September 12, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA, §
Plaintiff, §
§
v. § CRIMINAL ACTION NO. 4:22-CR-612
§
EDWARD CONSTANTINESCU, *et al.*, §
Defendants. §

ORDER

The Court held a hearing on all pending motions on September 7, 2023. Defendant Mitchell Hennessey's Motion to Dismiss Counts 8, 9, and 11 (Doc. No. 159) and his Motion to Sever (Doc. No. 365) are denied. Hennessey's alternative request for a continuance (Doc. No. 365) as well as all of the Motions for Continuance filed by all of the other Defendants are hereby granted. (Doc. Nos. 379, 383). The Government's oral motion to compel reciprocal discovery is granted and Defendants are to comply by September 29, 2023. The Court granted in part and denied in part the Motion to Permit the Sale of Property (Doc. No. 354). This will be specifically addressed in a separate order. The Court granted various *Brady*-related motions. The Government is to produce all exculpating SEC and FINRA records. The Court, realizing this production may be problematic, orders the Government to provide an update on this production by October 13, 2023. These documents are limited to exculpatory records concerning the stocks that are the basis of the charges and the stocks included in all of the extraneous trades that the Government is seeking to admit into evidence.

The Government is to produce (to the extent it has not done so already) all trade records and 1099B tax records in the possession of its investigating team. The Court realizes the production of the latter is problematic given that these documents are more likely to be accessible to the Defendants as opposed to the Government. The Court also realizes that all

parties may have problems obtaining these records. The Government shall produce the ones the prosecution team has obtained. Further, the Court notes that all Defendants waived all privilege and privacy claims concerning these records. Therefore, in an effort to aid the Defendants, the Court suggested and the Defendants agreed to try to go straight to the source of these documents. That being the case, the Court orders Matthew Ford as counsel for Defendant Edward Constantinescu to act as liaison for all the Defendants. He is to provide draft subpoenas to the various brokerage houses, banks, and/or other entities to obtain these records and provide these drafts to the Court for approval. Following that approval, he is to effectuate service of those subpoenas as soon as practicable.

The Government has until September 17, 2023, to respond to Defendant John Rybarczyk's recently filed Motion to Dismiss (Doc. No. 397) and his Motion to Exclude Extraneous Episodes (Doc. No. 408). Counsel for Defendant Edward Constantinescu shall file a new *Brady* motion/brief concerning the topic of the involvement of an FBI Agent benefiting from the trades in question and the topic of the discussions between agents/attorneys for the Government and his wife's divorce attorney. This shall be filed by September 17, 2023. The Government shall then have 10 days to respond.

All parties are to meet and confer about a joint jury questionnaire and how the various trading and business records will be proven up and/or authenticated before trial. The Court will then resolve those issues at the pre-trial conference. The Court will by separate order issue a new scheduling order with an April 2024 trial date.

SIGNED this 12th day of September, 2023.



Andrew S. Hanen
United States District Judge